



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2022-N056; FXES1114020000-234-FF02ENEH00]

Application for Amendment of Incidental Take Permit; Cibolo Canyon Master Phase II Environmental Assessment and Habitat Conservation Plan for Golden-Cheeked Warbler; Bexar County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: TF Cibolo Canyons LP (applicant) has applied to the U.S. and Wildlife Service (Service) to amend their existing incidental take permit (ITP), pursuant to the Endangered Species Act. In support of the application, the applicant submitted a proposed amendment to their *Cibolo Canyon Master Phase II Environmental Assessment and Habitat Conservation Plan* (HCP). The requested amendment, if approved, would continue authorization of incidental take of the golden-cheeked warbler. We also announce the availability of a draft screening form that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act (NEPA). We invite the public and local, State, Tribal, and Federal agencies to comment on the ITP application, as well as the amended HCP and draft NEPA screening form.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining documents:* You may obtain copies of the proposed HCP, draft NEPA screening form, and other related documents at the Service's web site at <https://www.fws.gov/office/austin-ecological-services>. You may obtain copies of the ITP application by contacting the Service's Austin Ecological Services Field Office (see **FOR**

FURTHER INFORMATION CONTACT). *Submitting comments:* You may submit written comments by email to FW2_AUES_Consult@fws.gov. Please note that your comment is in reference to the Cibolo Canyon HCP. For more information, see **Public Availability of Comments**.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Acting Project Leader, Austin Ecological Services Field Office; telephone 512-490-0057. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received and make available for public review a proposed amendment to the *Cibolo Canyon Master Phase II Environmental Assessment and Habitat Conservation Plan* in Bexar County, Texas, ITP application, and an associated draft screening form. TF Cibolo Canyons LP (applicant) has applied for an amended ITP supported by the proposed amendment to their HCP. If approved, their already issued 30-year permit would continue authorization of incidental take of the federally listed, endangered golden-cheeked warbler (*Setophaga chrysoparia*; warbler) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The permit would continue to authorize incidental take of the warbler resulting from vegetation clearing for construction of homes, apartments, and other such facilities.

In addition, in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have prepared a draft NEPA screening form to evaluate the proposed amendment to the HCP and potential permit issuance. We are accepting comments on the proposed amendment to the HCP and draft screening

form.

2. The applicant and the Service have developed the proposed amendment to the HCP, which describes the measures the applicant has volunteered to take to meet the issuance criteria for an ESA section 10(a)(1)(B) permit associated with the HCP. The issuance criteria are found at 50 CFR 17.22(b)(2).
3. The HCP would be implemented by the applicant and would remain effective until the expiration of the HCP and associated permit.
4. As described in the HCP, the potential incidental take of the warbler could result from otherwise lawful activities covered by the HCP.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the “take” of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing such take of endangered and threatened species are found at 50 CFR 17.21 and 50 CFR 22, and 50 CFR 17.31 and 50 CFR 32, respectively.

Proposed Action

The proposed action involves the issuance of an amended 10(a)(1)(B) incidental take permit (ITP) to TF Cibolo Canyons LP (applicant) and approval of the proposed amendment to the *Cibolo Canyon Master Phase II Environmental Assessment and Habitat Conservation Plan*. The ITP would cover incidental “take” of the warbler associated with vegetation clearing and construction of homes, apartments, and other

such facilities, as described in ITP TE102437-0 and the HCP.

The existing ITP expires February 18, 2036, and, prior to now, no extension has been requested. The original permit authorized incidental take of warbler on 846 acres (ac) and resulted in 768 ac of mitigation on site (70 FR 22682, May 2, 2005). The primary purpose of the amendment request is to revise the boundaries of the original 768-acre GCWA preserve. The 768-acre preserve was placed under conservation easement as mitigation for the EA/HCP. Cibola requests to exchange 63 acres of preserve for 144 acres of Master Phase II development area. This boundary modification will result in an overall reduction of the development area from 846 to 765 acres, an increase of the conservation easement from 768 acres to 849 acres, and reduce the amount of habitat loss and take of the GCWA due to implementation of the EA/HCP. The proposed swap would result in less edge-to-area ratio in the preserve area.

To meet the requirements of a section 10(a)(1)(B) ITP, the applicant would implement their amended HCP. The HCP describes the conservation measures the applicant has agreed to undertake to minimize and mitigate incidental take and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of warbler in the wild.

Next Steps

We will evaluate the permit application, proposed amendment to the HCP, draft NEPA screening form, and comments we receive to determine whether the HCP application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the proposed amendment to the HCP and issue the permit to the applicant under section 10(a)(1)(B) of the ESA, in accordance with the terms of the amended HCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends, and until we have fully considered all comments received during the public

comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,
Regional Director, Southwest Region,
U.S. Fish and Wildlife Service.